

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1, 3, 4, 6 and 8-14 are now present in this application. Claims 1, 11 and 14 are independent.

By this Amendment, claims 2, 5 and 7 are canceled, claims 1, 3, 4, 6 and 8-10 are amended, and claims 11-14 are added. No new matter is involved.

Reconsideration of this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. § 119

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document.

Information Disclosure Citation

Applicants thank the Examiner for considering the references supplied with the Information Disclosure Statement filed July 27, 2005, and for providing Applicants with an initialed copy of the PTO-1449 form filed therewith.

Drawings

Applicants acknowledge with appreciation an indication by the Examiner by telephone, on September 25, 2006, that the drawings have been accepted.

Rejection Under 35 U.S.C. § 102

Claims 1-3 and 5-10 stand rejected under 35 USC § 102(e) as being anticipated by U.S. patent 6,886,371 to Arai et al. ("Arai"). This rejection is respectfully traversed.

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicants are entitled to the patent.

Applicants respectfully submit that the PTO has failed to meet this burden.

A prior art reference anticipates the subject matter of a claim when that reference discloses every feature of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed Cir. 1997). While, of course, it is possible that it is inherent in the operation of the prior art device that a particular element operates as theorized by the Examiner, inherency may not be established by probabilities or possibilities. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Initially, Applicants note that this rejection is moot with respect to claims 2, 5 and 7, which have been canceled.

Applicants respectfully submit that Arai does not disclose the invention as recited in amended claim 1, which claims an apparatus that electrically charges recirculated wash water, because the Arai does not appear to disclose electrically charging recirculated wash water, although Arai does disclose initially charging tap water in Fig. 26. Arai's Fig. 26 embodiment concerns electrolyzing only tap water (cols. 23 and 24, lines 36-48), not recirculated wash water. Applicants do not find an explicit disclosure in Arai of electrically charging recirculated wash water, as claimed.

Furthermore, Arai fundamentally differs from Applicants' claimed invention in that Arai focuses on pre-washing clothes, including using a jet nozzle, rather than on just enhancing the characteristics of recirculated wash water, as claimed.

Claims 6 and 8-10 depend from amended claim 1 and are not disclosed by Arai at least for the reasons that amended claim 1 is not disclosed by Arai.

Accordingly, neither independent amended claim 1, nor dependent claims 6 and 8-10, are anticipated by Arai.

Reconsideration and withdrawal of this rejection of claims 1-3 and 5-10 are respectfully requested.

Rejections under 35 U.S.C. §103

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Arai as applied in the rejection of claim 3, and further in view of U.S. Patent 5,570,596 to Imai et al. ("Imai"). This rejection is respectfully traversed.

Because the rejection is based on 35 U.S.C. §103, what is in issue in such a rejection is "the invention as a whole," not just a few features of the claimed invention. Under 35 U.S.C. §103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under section 103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See In re O'Farrell, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the Examiner must explain what the differences between the claimed invention and the prior art are and provide objective factual evidence to support a conclusion that it would be obvious to one of ordinary skill in the art to achieve the claimed invention, which includes those missing features.

In the second place, in rejecting claims under 35 U.S.C. §103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent

art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. F-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. Note, In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing

alone, are not "evidence." See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Moreover, a factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

The Office Action admits that Arai does not disclose using a source of DC power converted from AC power and, in an attempt to remedy this deficiency, turns to Imai, which discloses supplying DC power to a control circuit of an automatic washing machine by using a step down transformer and converting AC to DC power.

Applicants respectfully submit that Arai fails to disclose or suggest the invention recited in amended claim 1, from which claim 4 depends, regardless of the source of electrical power to its electrodes, and that Imai is not applied to remedy the deficiencies of Arai, that are noted above regarding Applicants' traversal of the rejection of claim 1.

Accordingly, even if one of ordinary skill in the art were properly motivated to modify Arai to employ a DC power source using stepped down AC power, the modified version of Arai would neither disclose or render obvious the invention recited in claim 4, for reasons discussed above.

Furthermore, because Arai does not disclose a power source for its electrodes 89a and 89b and because Imai does not disclose that its DC power source is used to power electrolytic electrodes, the Office Action fails to present objective factual evidence of proper motivation to modify Arai to use the claimed AC to DC conversion apparatus to power Arai's electrolytic electrodes 89a and 89b. Moreover, as neither applied reference suggests converting AC to DC to

power water ionizing electrodes, the motivation for modifying one of the two references to include that feature must be based on speculation and/or impermissible hindsight.

Reconsideration and withdrawal of the rejection of claim 4 are respectfully requested.

Claims 11-14

Independent claim 11, dependent claims 12-13, and independent claim 14 have been added for the Examiner's consideration. The patentable distinctness of independent claims 11 and 14 with respect to Arai and Imai has been discussed above with respect to how similar claim 1 patentably defines over the Arai and Imai references.

Applicants also submit that claims 12 and 13 depend from independent claim 1, and are therefore allowable based on their dependence from claim 1, which is believed to be allowable, for reasons discussed above.

Additional Cited References

Because the remaining reference cited by the Examiner has not been utilized to reject the claims, but has merely been cited to show the state of the art, no comment need be made with respect thereto.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

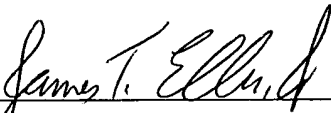
Prompt and favorable consideration of this Amendment is respectfully requested.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

Date: January 22, 2007

By: 
James T. Eller, Jr.
Reg. No.: 39,538

JTE/RJW:jmh 

P.O. Box 747
Falls Church, Virginia 22040-0747
Telephone: (703)205-8000